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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,968	07/28/2003	Michael Thomas Krawczyk	Aqua Lung.1466	6187
27547	7590	11/01/2004	EXAMINER	
MURPHEY & MURPHEY, A.P.C. 701 PALOMAR AIRPORT ROAD, SUITE 260 CARLSBAD, CA 92009			MITCHELL, TEENA KAY	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/628,968

Applicant(s)

KRAWCZYK ET.AL.

Examiner

Teena Mitchell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 11, 14-18, 21 and 23 is/are rejected.
- 7) ☒ Claim(s) 4-10, 12, 13, 19, 20, 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/20/03
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the mouthpiece able to swivel 360 degrees, ratcheting about the regulator. must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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### ***Claim Objections***

Claims 8, 17, and 18 are objected to because of the following informalities:

Claim 8, "...the secured position..." lacks antecedent basis.

Claims 17 and 18, "...the mouthpiece attachment position..." lacks antecedent basis. Correction is required.

### ***Claim Rejections - 35 USC § 102***

**The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:**

**A person shall be entitled to a patent unless –**

**(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.**

**Claims 1-3, 5, 11, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Winefordner et.al. (5,503,140).**

Winefordner in a regulator discloses:

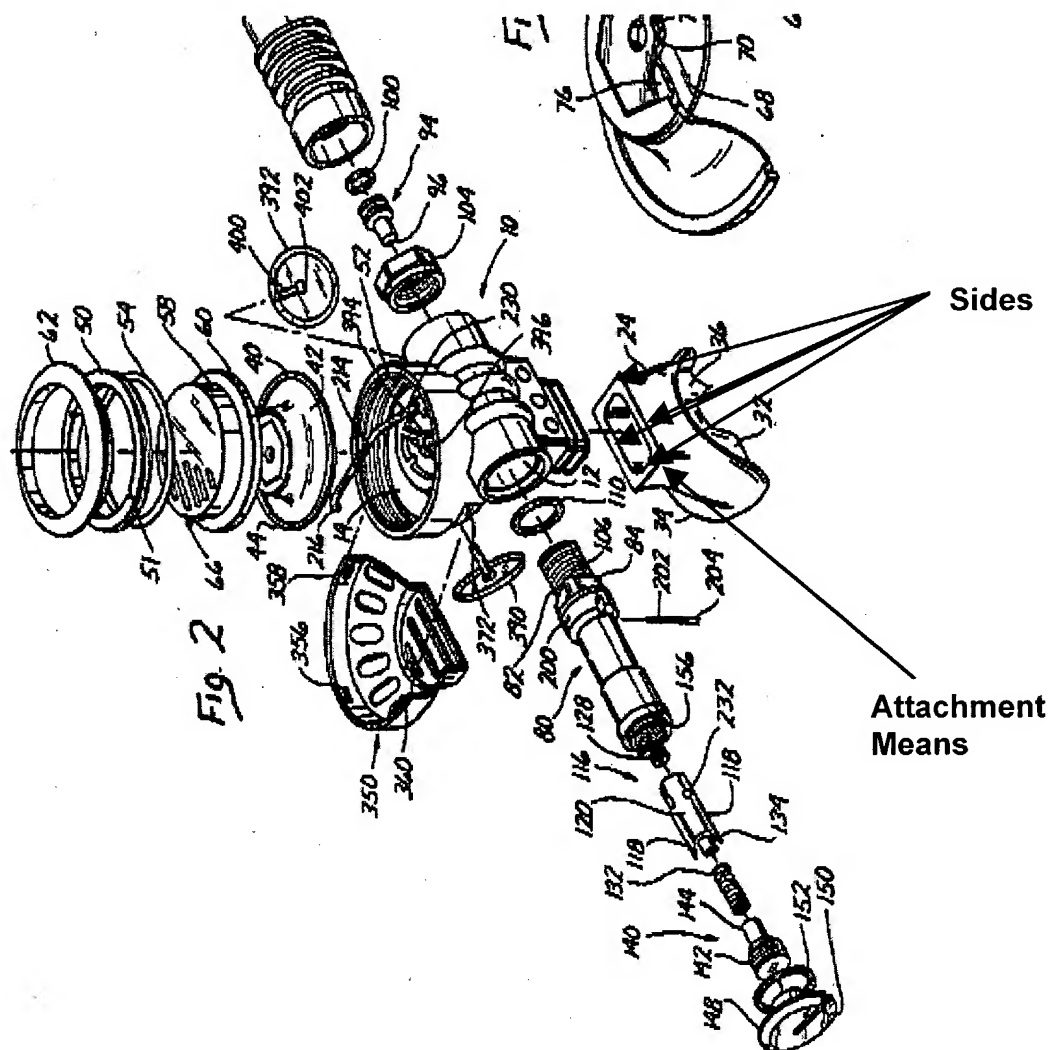
- a chamber having a cylindrical body (10);
- a first opening on the cylindrical body (14) wherein an exhaust valve (40) is removably attached to the first opening of the cylindrical body;
- a second opening on the cylindrical body (note #24; opening where 24 inserts into the body) wherein a mouthpiece (24) is removably attached to the second opening of the cylindrical body;
- a hose (at 104) connected to the chamber wherein the hose connects the cylindrical body to an air source.

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With respect to claim 2, Winefordner discloses a third opening (12) in the cylindrical body wherein the third opening in the cylindrical body has a blanking plug (150).

With respect to claim 3, Winefordner discloses an exhaust mount (60, 50, 58, 54, 62) attached to the first opening wherein the exhaust valve (40) attaches to the exhaust mount.

With respect to claim 5, the mouthpiece has an attachment means with a plurality of sides for attachment to the regulator (see illustration of Fig. 2 below).



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With respect to claim 11, Winefordner discloses:

- a chamber having a cylindrical body (10);
- a first opening on the cylindrical body (14);
- an exhaust valve (40) removably attached to the first opening of the cylindrical body;
- a second opening on the cylindrical body (note #24, where 24 inserts into the body);
- a mouthpiece (24) removably attached to the second opening of the cylindrical body wherein the mouthpiece has a first side adapted for insertion into a mouth (at 32, 36) and a second side having a plurality of sides contained thereon (See illustration of Fig. 2 above);
- a third opening (12) on the cylindrical body wherein the third opening has a blanking plug (150) contain thereon; a hose connected to the chamber wherein the hose connects the cylindrical body to the air source (at 104).

With respect to claim 14, Winefordner discloses wherein the mouthpiece is rotatable about the regulator (inasmuch as the mouthpiece can be removed and placed on the body it meets the limitation of being rotatable about the body).

***Claim Rejections - 35 USC § 103***

**The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:**

**(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which**

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said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 15-18, 21, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winefordner et.al. (5,503,140).

With respect to claim 15 the claimed methods would have been obvious because they would have resulted from the use of the device as recited above with respect to claims 1-3 and 11 above.

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With respect to claim 16, Winefordner discloses mounting of the regulator in connection with a plurality of configurations (Fig. 2).

With respect to claim 17, Winefordner discloses a removable mouthpiece therefore the step of reconfiguring the mouthpiece in relation to the regulator would have been obvious to one of ordinary skill in the art because the placing the mouthpiece on the regulator body is reconfiguring.

With respect to claim 18, note rejection of claim 17 above.

With respect to claim 21, Winefordner does not disclose a threaded clamping ring, however it would have been an obvious matter of design consideration to employ a threaded clamping ring because applicant has not disclosed solves a stated problem is for any particular purpose and applicant's invention would have performed equally well with any attaching means. Accordingly the use of a threaded clamping ring is deemed to be a design consideration, which fails to distinguish over the prior art of Winefordner.

With respect to claim 23, note rejection of claim 21 above.

### ***Allowable Subject Matter***

Claims 4-10, 12, 13, 19, 20, and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

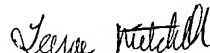
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art is cited to show regulators: 2002/0134385; 6,332,464; 5,724,961; 5,127,398.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (703) 308-4016. The examiner can normally be reached on Monday-Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Teena Mitchell  
Examiner  
Art Unit 3743  
October 29, 2004